

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

**ILLINOIS CENTRAL RAILROAD
COMPANY,**

Plaintiff,

v.

**Case No. 3:10-CV-00197
JUDGE SHARP**

**TENNESSEE DEPARTMENT OF
REVENUE and REAGAN FARR,
Commissioner of Revenue of the State of
Tennessee,**

Defendants.

**DECLARATION OF MATHIEU LEFEBVRE IN SUPPORT OF
ILLINOIS CENTRAL RAILROAD COMPANY'S RESPONSE IN OPPOSITION
TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

I, Mathieu Lefebvre, declare and state as follows:

1. I am the Manager Locomotive Diesel Fuel, Supply Management, for Canadian National Railway Company, as well as its subsidiary railroads operating in the United States (including the Illinois Central Railroad Company) (collectively "CN"). In my capacity as the Manager Locomotive Diesel Fuel, I am responsible for the purchasing of diesel fuel to power CN's locomotives throughout its network, and for the logistics of moving fuel from purchase location to the loading of the locomotives.

2. CN, like all other major railroads, uses diesel fuel that has been indelibly dyed in accordance with Internal Revenue Service regulations in the US and provincial regulations in Canada. It is important that CN and all railroads use dyed diesel fuel to power their locomotives.

Undyed or "clear" diesel fuel, such as used by the motor carrier industry, is subject to federal and state highway excise taxes in the US and to provincial fuel taxes in Canada because that diesel fuel is used for propulsion of highway vehicles. Dyeing diesel fuel, on the other hand, is a mechanism to ensure that untaxed diesel fuel is not being used for propulsion of motor vehicles on the public highways. In summary, railroads' use of dyed fuel in their locomotives is part of a binary system established under federal and state law by which on-road motor vehicle users consume clear fuel and off-road users consume dyed fuel.

3. CN purchases approximately 425 million gallons of diesel fuel annually to power its fleet of locomotives (including approximately 55 million gallons purchased annually by Illinois Central Railroad Company), or an average of 35 million gallons per month.

4. Most CN locomotives have diesel fuel tanks with approximately 4,100 gallons of usable capacity. A locomotive can travel around 1,300 miles between refueling.

5. CN operates and fuels its locomotives as part of an interstate and interprovincial network, with fueling facilities throughout its system in various states and provinces. CN avoids having locomotives run out of fuel by fully fueling them at trip origin. Therefore, a locomotive traversing a state or a province may be carrying fuel in its tank from previous refueling locations in distant states or provinces.

6. If CN were to choose to purchase only clear fuel in the state of Tennessee (or another state), then, as a practical matter, CN would have to use only clear fuel in all states. Internal Revenue Service regulations impose a penalty on misuse of dyed fuel, which includes altering the strength of dye by blending dyed fuel with undyed fuel except in certain limited uses. Refueling a locomotive with dyed fuel, while the locomotive's tank contained undyed diesel fuel remaining from a previous fueling, or vice versa, on a regular basis, would violate these rules.

Therefore, for CN to elect to load only clear diesel fuel in Tennessee, it would have to load only clear fuel throughout its network.

7. Further reason for CN's use of dyed diesel fuel in locomotives is that the use of dyed diesel fuel is a deterrent to fuel theft. That is because federal and state regulations prohibit any use of dyed diesel fuel for on-road purposes. If a highway user were caught using dyed diesel fuel in a highway vehicle, there would be significant penalties. Therefore, dyed diesel fuel is less likely to be stolen than clear diesel fuel.

8. Similarly, use of dyed diesel fuel also serves as a control function to prevent inadvertent or mistaken diversion of locomotive fuel supplies into on-highway vehicles in the course of CN's operations. Maintenance of stocks of undyed fuel for locomotive use would be vulnerable to mistaken loading into highway vehicles, and there would be no control marker to distinguish the fuel in such taxable use from the fuel in nontaxable off-highway use.

9. In summary, the principal reason for CN's use of dyed diesel fuel in locomotives is as a marker to demonstrate that such fuel is used solely for off-road purposes and is not subject to the diesel fuel taxes imposed for consumption of diesel fuel in highway vehicles.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated this 25th day of March 2016.



Mathieu Lefebvre

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 30, 2016, a copy of the foregoing *Declaration of Mathieu Lefebvre in Support of Illinois Central Railroad Company's Response in Opposition to Defendants' Motion for Summary Judgment* was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular United States mail. Parties may access this filing through the Court's electronic filing system.

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